

## Memorandum 2021-39

**Fish and Game Law: Phase One Public Comment**

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In this study, the Commission<sup>1</sup> has been directed by the Legislature to consider revision of the Fish and Game Code in order to make technical improvements to that law, without making any significant substantive change to the effect of the law.<sup>2</sup>

In response to that directive, in December 2018 the Commission approved and distributed a tentative recommendation that would recodify the existing Fish and Game Code in a proposed new Fish and Wildlife Code.<sup>3</sup> After releasing the tentative recommendation, the Commission decided to divide the proposed statutory revision into two phases, with “Phase One” addressing and proposing textual improvements to existing law in a draft recommendation that would revise the existing Fish and Game Code.<sup>4</sup>

This memorandum continues analysis of public comment on “Phase One” changes proposed by the Commission, pursuant to a methodology previously approved by the Commission.<sup>5</sup> The comments analyzed have been submitted by the Fish and Game Commission (hereafter, “FCG”), and the Department of Fish and Wildlife (hereafter, “DFW”).<sup>6</sup>

Unless otherwise indicated, all statutory references in the memorandum are to the existing Fish and Game Code, or to the proposed Fish and Wildlife Code as set out in the Commission’s previously distributed tentative recommendation.

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See 2012 Cal. Stat. res. ch.108 (ACR 98 (Wagner)).

3. See Memorandum 2018-67 and its First Supplement; Minutes (Dec. 2018), p. 10.

4. See Memorandum 2021-11; Minutes (Feb. 2021), p. 5. “Phase Two” would involve consideration of proposed organizational changes to the existing law.

5. See Memorandum 2021-16, pp. 2-3; Minutes (Mar. 2021), p. 4.

6. The comments are reproduced in an Exhibit to this supplement.

## CHANGES THAT SHOULD BE MADE

The following proposed revisions were supported by one or both commenting entities, with neither opposing the change. The staff recommends that the revisions be provisionally approved for inclusion in the draft recommendation that is being assembled.

**This entire section of the supplement will be treated as a consent item.** Unless a Commissioner or member of the public requests that a revision in this section be discussed, it will not be individually presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to provisionally approve all revisions in this section as a group for inclusion in the draft recommendation.

**Proposed Sections 15715-15740 (Existing Section 8752); Proposed Sections 15745-15760 (Existing Section 8754); Proposed Sections 15775-15785 (Existing Section 8755); Proposed Sections 41485, 42505, 44205 (Existing Section 8756)**

The tentative recommendation inquired about the propriety of revising several existing sections to eliminate what appeared to be a superfluous reference to a specific type of fishing net (a purse net) that is part of a concurrently referenced category of nets (round haul nets). Both commenting entities agreed that the deletion of the superfluous reference to purse nets was appropriate.

**The staff recommends that the Commission's proposed changes be included in the draft recommendation as follows:**

**§ 8752 (amended). Districts 6, 7, 8, 9, 10, and 11**

8752. In Districts 6, 7, 8, 9, 10, and 11, ~~purse and~~ round haul nets may be used.

**Comment.** Section 8752 is amended to eliminate a superfluous reference to purse nets. See Section 8750 (round haul nets include purse nets).

**§ 8754 (amended). Districts 16, 17, 18, and 19**

8754. (a) In Districts 16, 17, 18, and 19, ~~purse and~~ round haul nets may be used, except that purse seines or ring nets may not be used in that portion of District 19 lying within three miles offshore from the line of the high-water mark along the coast of Orange County from sunrise Saturday to sunset Sunday from May 1 to September 10, inclusive.

(b) Purse seine or ring nets may not be used from May 1 to September 10, inclusive, in the following portions of District 19:

- (a) (1) Within a two-mile radius of Dana Point.
- (b) (2) Within a two-mile radius of San Mateo Point.
- (c) (3) Within two miles offshore from the line of the high-water mark along that portion of the coast of Orange County lying between the northernmost bank of the mouth of the Santa Ana River and a point on that coast six miles south therefrom.

**Comment.** Section 8754 is amended to eliminate a superfluous reference to purse nets. See Section 8750 (round haul nets include purse nets).

The section is also amended to add and revise subdivision designations.

**§ 8755 (amended). Districts 20, 20A, and 21**<sup>7</sup>

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**§ 8756 (amended). Salmon, steelhead, striped bass, or shad**

8756. Salmon, steelhead, striped bass, or shad may not be taken with ~~purse or~~ round haul nets.

**Comment.** Section 8756 is amended to eliminate a superfluous reference to purse nets. See Section 8750 (round haul nets include purse nets).

**Proposed Section 15775 (Existing Section 8755)**

In a Note following proposed Section 15775, the Commission also inquired about what appeared to be missing introductory text in Section 8755(a). DFW agreed text was missing, and suggested revision of the subdivision that staff concurs would be appropriate. FGC offered no comment.

**The staff recommends that this revision to Section 8755(a), along with the deletion of superfluous references to purse nets in the section, be included in the draft recommendation as follows:**

**§ 8755 (amended). Districts 20, 20A, and 21**

8755. In Districts 20A and 21, ~~purse and~~ round haul nets may be used.

- (a) In District 20, ~~Purse and~~ round haul nets may be used, except (1) from sunrise Saturday to sunset Sunday, in ~~that portion of District 20~~ the area from a line extending three nautical miles east magnetically from the extreme easterly end of Santa Catalina Island southwesterly and northerly to a line extending three nautical miles southwest magnetically from the most southerly promontory of China Point and (2) at any time during the period commencing on

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7. The proposed revision to existing Section 8755 is presented in the next section of this memorandum (entitled "Proposed Section 15775 (Existing Section 8755)").

June 1st and ending on September 10 in each year, ~~that portion of District 20~~ the area from a line extending three nautical miles east magnetically from the extreme easterly end of Santa Catalina Island southerly to a line extending three nautical miles southeasterly magnetically from the United States government light on the southeasterly end of Santa Catalina Island.

(b) Subdivision (a) shall not be construed as restricting the right to use the waters therein specified for anchorage of vessels at any time.

**Comment.** Section 8755 is amended to eliminate superfluous references to purse nets. See Section 8750 (round haul nets include purse nets).

Subdivision (a) of the section is also amended to insert an inadvertently omitted introductory clause and make conforming technical changes.

### **Proposed Sections 15910 and 15915 (Existing Section 8780)**

Proposed Sections 15910 and 15915 would continue existing Section 8780(b)-(d), addressing the use of bait nets in identified Fish and Game Districts.

In a Note following proposed Section 15915, the Commission asked whether a reference to District 19A could be deleted from existing Section 8780(b). Both entities agree that the reference can be deleted without changing the meaning of the provisions of the section.

**The staff recommends that the Commission’s proposed change be included in the draft recommendation as follows:**

#### **§ 8780 (amended). Use of bait nets**

8780. (a) As used in this chapter, the term “bait net” means a lampara or round haul type net, the mesh of which is constructed of twine not exceeding Standard No. 9 medium cotton seine twine or synthetic twine of equivalent size or strength. Notwithstanding Section 8757, except for drum seines and other round haul nets authorized under a permit issued by the department pursuant to this section, the nets may not have rings along the lead line or any method of pursuing the bottom of the net.

(b) Bait nets may be used to take fish for bait in Districts 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, ~~19A~~, 19B, 20A, 21, 118, and 118.5.

(c) In District 19A, bait nets may be used only to take anchovies, queenfish, white croakers, sardines, mackerel, squid, and smelt for live bait purposes only. Bait nets may not be used within 750 feet of Seal Beach Pier or Belmont Pier.

(d) No other species of fish may be taken on any boat carrying a bait net in District 19A, except that loads or lots of fish may contain

not more than 18 percent, by weight of the fish, of other bait fish species taken incidentally to other fishing operations and that are mixed with other fish in the load or lot.

**Comment.** Subdivision (b) of Section 8780 is amended to eliminate an erroneous reference to Fish and Game District 19A, as use of bait nets in that district is specifically governed by subdivisions (c) and (d).

### **Proposed Section 16100 (Existing Section 8606.1)**

In the tentative recommendation, the Commission invited comment on whether existing Section 8606.1 was obsolete and could be repealed. Both commenting entities agreed that proposed repeal would be appropriate.

**The staff recommends that proposed repeal be included in the draft recommendation as follows:**

#### **§ 8606.1 (repealed). Use of nearshore trawl nets**

~~8606.1. (a) The Legislature finds and declares that the use of nearshore trawl nets was authorized through the experimental gear permit process and the alternative gear development program as a potential alternative to the use of gill and trammel nets in areas where the use of that gear type has been prohibited.~~

~~(b) The Legislature, in considering the needs of user groups, requires the use of nearshore trawl nets to be phased out effective January 1, 1993.~~

**Comment.** Section 8606.1 is repealed as obsolete.

### **Proposed Sections 16110 and 16160 (Existing Section 8841)**

Proposed Sections 16110 and 16160 would each continue parts of existing Section 8841.

A Commission Note following proposed Section 16110 inquired whether subdivision (k) of existing Section 8841 was obsolete. DFW indicated that the subdivision was obsolete and could be deleted from the section.

FGC offered no comment on this Note.

A Commission Note following proposed Section 16160 inquired whether subdivision (f) of Section 8841 might be missing context, and invited comment on a suggested inclusion. Both entities agreed that it would be appropriate to add the context suggested by the Commission.

**The staff recommends that these two revisions be included in the draft recommendation as follows:**

**§ 8841 (amended). Bottom trawl fisheries**

8841. (a) The commission is hereby granted authority over all state-managed bottom trawl fisheries not managed under a federal fishery management plan pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.) or a state fishery management plan pursuant to Part 1.7 (commencing with Section 7050), to ensure that resources are sustainably managed, to protect the health of ecosystems, and to provide for an orderly transition to sustainable gear types in situations where bottom trawling may not be compatible with these goals.

(b) The commission is hereby granted authority to manage all of the following fisheries in a manner that is consistent with this section and Part 1.7 (commencing with Section 7050):

- (1) California halibut.
- (2) Sea cucumber.
- (3) Ridge-back, spot, and golden prawn.
- (4) Pink shrimp.

(c) The commission is also granted authority over other types of gear targeting the same species as the bottom trawl fisheries referenced in subdivision (a) to manage in a manner that is consistent with the requirements of Part 1.7 (commencing with Section 7050).

(d) Every commercial bottom trawl vessel issued a state permit is subject to the requirements and policies of the federal groundfish observer program (50 C.F.R. 660.360).

(e) The commission may only authorize additional fishing areas for bottom trawls after it determines, based on the best available scientific information, that bottom trawling in those areas is sustainable, does not harm bottom habitat, and does not unreasonably conflict with other users.

(f) It is unlawful to use roller gear more than eight inches in diameter in connection with a trawl net.

(g) Commencing April 1, 2006, it is unlawful to fish commercially for prawns or pink shrimp, unless an approved bycatch reduction device is used with each net. On or before April 1, 2006, the commission shall approve one or more bycatch reduction devices for use in the bottom trawl fishery. For purposes of this subdivision, a rigid grate fish excluder device is the approved type of bycatch reduction device unless the commission, the Pacific Marine Fishery Management Council, or the National Marine Fisheries Service determines that a different type of fish excluder device has an equal or greater effectiveness at reducing bycatch. If the commission does not approve a bycatch reduction device prior to April 1, 2006, then a device that is approved by the Pacific Marine Fishery Management Council or the National Marine Fisheries Service shall be deemed approved by the commission.

(h) Except as provided in Section 8495 or 8842, it is unlawful to engage in bottom trawling in ocean waters of the state.

(i) This section does not apply to the use of trawl nets pursuant to a scientific research permit.

(j) The commission shall facilitate the conversion of bottom trawlers to gear that is more sustainable if the commission determines that conversion will not contribute to overcapacity or overfishing. The commission may participate in, and encourage programs that support, conversion to low-impact gear or capacity reduction by trawl fleets. The department may not issue new permits to bottom trawlers to replace those retired through a conversion program.

~~(k) As soon as practicable, but not later than May 1, 2005, the commission and the department shall submit to the Pacific Fishery Management Council and the National Marine Fisheries Service a request for federal management measures for the pink shrimp fishery that the commission and the department determine are needed to reduce bycatch or protect habitat, to account for uncertainty, or to otherwise ensure consistency with federal groundfish management.~~

~~(k)~~ (k) No vessel may utilize bottom trawling gear without a state or federal permit.

**Comment.** Subdivision (f) of Section 8841 is amended to clarify the context in which the provision is intended to apply.

Subdivision (k) is amended to delete obsolete material.

### **Proposed Section 19500 (Existing Section 9001.7)**

Proposed Section 19500(g) would continue existing Section 9001.7(g), which references a non-existent Fish and Game District.

In response to a Note following proposed Section 19500 inquiring about deletion of the reference, both entities agreed the reference can be removed.

**The staff recommends that this revision be included in the draft recommendation as follows:**

#### **§ 9001.7 (amended). Criteria for use of trap**

9001.7. Finfish, other than sablefish and hagfish, may be taken under a general trap permit if all of the following criteria are also met:

(a) Every person aboard the vessel possesses a valid general trap permit that has not been suspended or revoked.

(b) If nearshore species are present, at least one person aboard the vessel possesses a valid nearshore fishery permit and a nearshore fishery trap endorsement that has not been suspended or revoked.

(c) If deeper nearshore species are present, at least one person aboard the vessel possesses a valid deeper nearshore species fishery permit that has not been suspended or revoked.

(d) During the period from one hour after sunset to one hour before sunrise, finfish traps that are left in the water shall be unbaited with the door secured open. If, for reasons beyond the control of the permittee, all trap doors cannot be secured open prior to one hour after sunset, the permittee shall immediately notify the department.

(e) Popups shall not be used on buoy lines attached to finfish traps, and shall not be possessed aboard a vessel when taking finfish under a general trap permit.

(f) Trap destruction devices used on finfish traps shall conform to the current regulatory requirements for those devices pursuant to Section 9003 and as adopted by the commission.

(g) No finfish traps shall be set within 750 feet of any pier, breakwall, or jetty in District 6, 7, 17, 18, 19, 19A, 19B, 20, 20A, ~~20B~~, or 21.

(h) No more than 50 finfish traps may be used in state waters along the mainland shore.

(i) The mesh of any finfish trap used pursuant to this section shall measure not less than two inches by two inches.

(j) The following fish shall not be used as bait in finfish traps:

(1) Lobster.

(2) Crabs of the genus cancer, except rock crab, yellow crab, and red crab, as identified in Section 8282, which may be used as bait under the authority of a rock crab trap permit issued pursuant to Section 8282.

(3) Any other finfish or invertebrate to which a minimum size limit applies that is used or possessed in a condition so that its size can not be determined.

(k) Lobster may be possessed aboard or landed from any vessel on which finfish are also present, if every person aboard the vessel has a valid lobster permit that has not been suspended or revoked and complies with Article 5 of Chapter 2 of the Fish and Game Code, this article, and the regulations adopted pursuant thereto.

**Comment.** Subdivision (g) of Section 9001.7 is amended to delete a reference to a Fish and Game District that does not presently exist.

### **Proposed Section 19805 (Existing Section 9050)**

In the tentative recommendation, the Commission invited comment on whether a cross-reference in existing Section 9050 to a long ago repealed and apparently discontinued code section could be deleted. Both entities agreed that the cross-referenced section was obsolete, and that deletion of the cross-reference was appropriate.

**The staff recommends that deletion be included in a draft recommendation as follows:**

**§ 9050 (amended). Miscellaneous tools**

9050. A spade, shovel, hoe, rake, or other appliance operated by hand may be used to take mollusks, sand crabs, and shrimps in Districts 1, 1<sup>1/2</sup>, 2, 2<sup>1/2</sup>, 3, 3<sup>1/2</sup>, 4, 4<sup>1/8</sup>, 4<sup>3/4</sup>, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 19A, 20, 20A, and 21, except as specified in ~~Sections~~ Section 7332 and 8303, and except that freshwater clams shall not be taken by means of such appliances on any levee or on the berm of any levee.

**Comment.** Section 9050 is amended to delete obsolete material.

**Proposed Section 20205 (Existing Section 8032)**

Proposed Section 20205 would continue existing Section 8032, but revise a reference to a “commercial fish business license” to instead refer to a “multi-function commercial fish business license,” using nomenclature assigned to that license by DFW. A Note following the proposed section specifically noted this change, but did not make any further inquiry.

FGC did not comment on the Note. DFW agrees with the proposed amendment.

**The staff recommends that the proposed revision be included in the draft recommendation as follows:**

**§ 8032 (amended). Types of licenses**

8032. (a) A multi-function commercial fish business license shall be issued that authorizes any or all activities described in Section 8033, 8034, 8035, or 8036. The annual fee for this license is one thousand three hundred seventy-three dollars (\$1,373).

(b) Specialty licenses for part of, but not all, activities described in subdivision (a) shall be issued in five classes, as follows:

(1) Fish receiver’s license, issued to any person engaged in the business of receiving fish as provided in Section 8033.

(2) Marine aquaria receiver’s license, issued to any person engaged in the business of receiving live marine species indigenous to California waters from a person required to be a licensed commercial fisherman for the purpose of wholesaling or retailing those species for pet industry or hobby purposes as provided in Section 8033.1.

(3) Fish processor’s license, issued to any person engaged in the business of processing fish as provided in Section 8034.

(4) Fish wholesaler's license, issued to any person who is engaged in the business of wholesaling fish as provided in Section 8035.

(5) Fish importer's license, issued to any person who is engaged in the business of importing fish as provided in Section 8036.

(c) The commission shall adjust the amount of the fee specified in subdivision (a), as necessary, to fully recover, but not exceed, all reasonable administrative and implementation costs of the department and the commission relating to those licenses.

**Comment.** Subdivision (a) of Section 8032 is amended to more precisely identify the license referenced in the subdivision.

### **Proposed Section 20220 (Existing Section 8037)**

Proposed Section 20220 would continue the second sentence of existing Section 8037(a). A Note following the proposed section invited comment on the addition of what appeared to be missing context in the sentence to clarify its intended meaning.

DFW supports the clarification; FGC did not comment.

**The staff recommends that the proposed revision be included in the draft recommendation as follows:**

#### **§ 8037 (amended). License on premises of business**

8037. ~~(a)~~ A person who engages in business involving fish which business activity would require more than one class of license under this article shall obtain either a commercial fish business license issued under subdivision (a) of Section 8032 or each of the specialty licenses which are required for the classes of activities engaged in. Each plant, facility, or other place of business in which an activity occurs that is required to be licensed shall have a copy of the required license on the premises.

(b) This section shall become operative on January 1, 1993.

**Comment.** Subdivision (a) of Section 8037 is amended to clarify its meaning.

### **Proposed Section 21915 (Existing Section 7921)**

Proposed Section 21915 would continue the first sentence of existing Section 7921, without substantive change. A Note following the proposed section inquired whether a reference in the existing provision to a "commercial passenger fishing boat license" should be conformed to a reference in the second sentence of the existing section to a "commercial passenger fishing vessel license."

DFW supports the conforming change; FGC did not comment.

The staff recommends that this revision be included in the draft recommendation as follows:

**§ 7921 (amended). Commercial passenger fishing vessel license**

7921. The base fee for a commercial passenger fishing ~~boat~~ vessel license is two hundred fifty dollars (\$250) in the 2004 license year, which shall be adjusted annually thereafter pursuant to Section 713. The commercial passenger fishing vessel license shall be issued to the holder of a commercial boat registration issued pursuant to Section 7881.

**Comment.** Section 7921 is amended to conform two references in the section to a commercial passenger fishing vessel license.

CHANGES THAT SHOULD NOT BE MADE

The following proposed revisions were opposed by one or both commenting entities, with neither supporting the change. The staff recommends that these changes not be included in the proposed recommendation.

**This entire section of the supplement will be treated as a consent item.** Unless a Commissioner or member of the public requests that a matter in this section be discussed, it will not be presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to decide that none of the proposed revisions described in this section should be included in the draft recommendation.

**Proposed Section 18710 (Existing Sections 8601 and 9029.5)**

Proposed Section 18710 would slightly broaden the application of existing Sections 8601 and 9029.5 in a manner that both entities believe would be problematic. After considering the submitted comment, the staff sees no reason to dispute that contention by the entities.

**The staff recommends that the proposed revision of existing Sections 8601 and 9029.5 in Section 18710 *not* be included in the draft recommendation.**

**Proposed Section 19510 (Existing Sections 8403 and 9022)**

Proposed Section 19510 would combine and restate parts of existing Sections 8403(b) and 9022(b) in a manner that both entities believe would be problematic. After considering the submitted comment, the staff sees no reason to dispute that contention by the entities.

**The staff recommends that the proposed revision of existing Sections 8403(b) and 9022(b) in Section 19510 *not* be included in the draft recommendation.**

**Proposed Section 21000 (Existing Sections 8043 and 8047)**

Proposed Section 21000 would combine and restate parts of existing Sections 8043 and 8047 in a manner that DFW believes would generally be problematic. After considering the submitted comment, the staff sees no reason to dispute that contention, nor any significant benefit that might be achieved from any remaining part of the restatement proposed in Section 21000.

**The staff recommends that the proposed revision of parts of existing Sections 8043 and 8047 in Section 21000 *not* be included in the draft recommendation.**

**Proposed Section 21010 (Existing Section 8043.2)**

Proposed Section 21010 would restate existing Section 8043.2 in a manner that both entities believe would be problematic. After considering the submitted comment, the staff sees no reason to dispute that contention by the entities.

**The staff recommends that the proposed revision of existing Section 8043.2 in Section 21010 *not* be included in the draft recommendation.**

**Proposed Section 21020 (Existing Sections 8043(b) and 8045)**

Proposed Section 21020 would combine and restate existing Sections 8043(b) and 8045 to make those provisions easier to understand and use, without intending any substantive change in meaning.

Both entities generally agree that the proposed restatement would not substantively change the meaning of the existing provision.<sup>8</sup> However, both entities also believe that restatement of the phrase “department registration number” in Section 8043(b)(3) to read “commercial boat registration number” would be problematic. The staff sees no reason to dispute that contention.

**The staff therefore recommends that the proposed revision of existing Section 8043(b)(3) described above *not* be included in the draft recommendation.**

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8. See the discussion of proposed Section 21020 in the part of this memorandum entitled “Changes That Should Presumptively Be Made.”

### **Proposed Sections 21025, 21105, 21210, and 21215 (Existing Section 8047)**

Proposed Sections 21025, 21105, and 21210 would restate parts of existing Section 8047 in a manner that one or both entities believe would be problematic. After considering the submitted comment, the staff sees no reason to dispute that contention.

**The staff recommends that the proposed revisions of existing Section 8047 in Sections 21025, 21105, 21210, and 21215 *not* be included in the draft recommendation.**

### **Proposed Section 21300 (Existing Section 8050)**

Proposed Section 21300 would restate existing Section 8050 to make the section easier to understand and use, without intending any substantive change in meaning.

DFW believes that a part of the proposed restatement would not substantively change the meaning of the section.<sup>9</sup> However, it believes most aspects of the restatement would be problematic.

FGC did not comment on the restatement of existing Section 8050.

After considering the submitted comment from DFW, the staff sees no reason to dispute DFW's contention regarding most of the proposed restatement of Section 8050.

**The staff therefore recommends that, with the exception of a single revision described later in this memorandum, the revision of existing Section 8050 in proposed Section 21300 *not* be included in the draft recommendation.**

### **Proposed Section 21855 (Existing Section 7707)**

Proposed Section 21855 would restate existing Section 7707, which was enacted in 1957 and has not since been amended. The restatement was intended to make the text of the existing section easier to understand and use. A significant part of the restatement involves deletion of cross-references to other code sections that were long ago repealed and did not appear to the Commission to have been continued.

Both entities agree that most of the proposed restatement would not substantively change the meaning of the existing text. However, the entities do not support the deletion of one of the cross-references, because a new provision

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9. See the discussion of proposed Section 21300 in the part of this memorandum entitled "Changes That Should Presumptively Be Made."

relating to the same general subject matter of the repealed section was enacted 16 years after the cross-referenced section was repealed, and assigned the same number. FGC expresses concern that this legislative history therefore does not clearly indicate that the cross-reference should be deleted.

The staff understands that contention, but believes that same legislative history is sufficiently antiquated that an amendment of Section 7707 that perpetuates the cross-reference may also substantively change existing law.<sup>10</sup>

**The staff therefore recommends that the entirety of the proposed revision of existing Section 7707 *not* be included in the draft recommendation.**

#### **Proposed Section 21910 (Existing Section 7921)**

Proposed Section 21910 would restate a part of existing Section 7921 in a manner that DFW believes would be problematic. After considering the submitted comment, the staff sees no reason to dispute that contention.

**The staff recommends that the proposed revision of existing Section 7921 in Section 21910 *not* be included in the draft recommendation.**

#### **Proposed Section 22800 (Existing Section 7710)**

Proposed Section 22800 would restate a part of existing Section 7710 in a manner that DFW believes would be problematic. After considering the submitted comment, the staff sees no reason to dispute that contention.

**The staff recommends that the proposed revision of existing Section 7720 in Section 22800 *not* be included in the draft recommendation.**

### CHANGES THAT SHOULD PRESUMPTIVELY BE MADE

The proposed revisions listed below were presented in a Commission Note in the tentative recommendation, and were not identified as problematic by either commenting entity. However, as the revisions were also not clearly supported by either entity, they are not yet recommended for inclusion in the draft

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10. Section 7707 is a nuisance statute, prohibiting the operation of a reduction plant in which a fish or part of a fish is used in violation of any of nearly 20 cross-referenced sections. At the present time, an operator charged with operating such a plant in which a fish was used in violation of the re-enacted cross-reference would have a reasonable argument, in light of the continued existence within Section 7707 of many cross-referenced sections that were long ago repealed, that the Legislature for some time has not been attentive to the cross-references in Section 7707, and had no realization when re-assigning an unused section number to a new provision that this section number was cross-referenced in Section 7707. However, that same argument would no longer be available if the Legislature of today were to amend the section to delete multiple cross-references, and affirmatively retain the cross-reference to the section with the re-assigned section number.

recommendation. Unless further input warrants a different approach, they will be presented for approval as consent items in a future memorandum.

**Proposed Sections 18820 and 18825 (Existing Section 9027.5(c)); Proposed Section 19505 (Existing Section 8403(c)); Proposed Section 21005 (Existing Sections 8043 and 8043.1); Proposed Section 21015 (Existing Section 8046(b)); Proposed Section 21110 (Existing Section 8046); Proposed Section 21115 (Existing Section 8047); Proposed Section 21150 (Existing Sections 8043.1(d), 8046(a), and 8047); Proposed Section 21225 (Existing Sections 8045 and 8047(d)); Proposed Section 21235 (Existing Section 8047(c)(2)); Proposed Section 21245 (Existing Section 8047(e)); Proposed Section 21850 (Existing Section 7706)**

The proposed sections listed above would restate some or all of the corresponding existing sections to make those sections easier to understand and use, without any intended substantive change in meaning.

In each instance, one or both entities agree the proposed restatement would not substantively change existing law, but neither entity offers clear support for the revision.

**At this time, the staff recommends that the restatements be treated as presumptively correct, and absent objection from a commenter, presented for approval as consent items in a future memorandum.**

#### **Proposed Section 20950 (Existing Section 8041)**

Proposed Sections 20950 was intended to restate existing Section 8041 to make it easier to understand and use, without intending any substantive change in meaning. Unfortunately, as noted by both entities, the proposed restatement inadvertently failed to continue subdivision (c) of the existing section.

Aside from that omission however, DFW indicated that the remainder of the restatement would not substantively change the existing section.

**The staff therefore recommends that the restatement of existing Section 8041 as set forth in proposed Section 20950, with the inadvertently omitted provision included, be treated as presumptively correct, and absent objection from a commenter, presented for approval as a consent item in a future memorandum.**

### **Proposed Section 21020 (Existing Sections 8043(b) and 8045)**

Proposed Section 21020 would combine and restate existing Sections 8043(b) and 8045 to make those provisions easier to understand and use, without intending any substantive change in meaning.

Both entities agree, with the exception of one revision, that the proposed restatement would not substantively change the meaning of the existing provisions. The staff has recommended that the objectionable revision *not* be included in the final recommendation.<sup>11</sup>

**The staff therefore recommends that the remainder of the restatement of Sections 8043(b) and 8045 in proposed Section 21020 be treated as presumptively correct, and absent objection from a commenter, presented for approval as consent items in a future memorandum.**

### **Proposed Section 21300 (Existing Section 8050)**

Proposed Section 21300 would combine and restate existing Sections 8050(a)(1) and 8050(d) to make the text of those provisions easier to understand and use.

DFW has indicated that two revisions of existing Section 8050 proposed by Section 21300 would be problematic, and the staff has recommended those revisions *not* be included in the final recommendation.<sup>12</sup> However, DFW has indicated that the part of proposed Section 21300 that combines and restates subdivisions (a)(1) and (d) of Section 8050 would not substantively change the meaning of the section.

FGC did not comment on proposed Section 21300.

**The staff therefore recommends that the combination and restatement of subdivisions (a)(1) and (d) of existing Section 8050 in proposed Section 21300 be treated as presumptively correct, and absent objection from a commenter, presented for approval as consent items in a future memorandum.**

#### FURTHER INPUT REQUIRED

The staff believes that further information is required before resolving the treatment of the proposed revisions described below. The staff will work with the commenters informally to assess how much time is needed to provide the

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11. See the discussion of proposed Section 21020 in the part of this memorandum entitled "Changes That Should *Not* Be Made."

12. See the discussion of proposed Section 21300 in the part of this memorandum entitled "Changes That Should *Not* Be Made."

necessary information. Once that information has been received, the issue will be presented to the Commission for decision.

**Proposed Section 15400 (Existing Section 8630)**

Proposed Section 15400 would revise and continue the first paragraph of existing Section 8630, the first section of an article that largely relates to fishing nets, but intermittently refers to fishing traps, in a less than straightforward manner.

The intended statutory interplay between the regulation of nets and traps in these provisions has already been presented to the Commission in Memorandum 2020-26, after which the Commission approved a staff recommendation permitting the staff to seek further input from the commenting entities on the subject.

**The staff recommends that the proposed revision of existing Section 8630 in proposed Section 15400 be incorporated in that discussion.**

**Proposed Sections 15605, 15615, and 18900 (Existing Section 8601.5); Proposed Sections 18800-18825 (Existing Section 9029)**

Proposed Sections 15605, 15615, and 18900 would each continue parts of existing Section 8601.5, with clarification of related terminology used in the existing section. A Commission Note following each proposed section invited comment on the appropriateness of the clarification.

The commenting entities agree with two clarifications proposed by the Commission, disagree with a third, and suggest a fourth clarification.

Proposed Sections 18800 through 18825 would continue the application of existing Section 9029 in multiple Fish and Game Districts, while clarifying one of the same terminological issues present in proposed Sections 15605, 15615, and 18900. A Note following proposed Section 18800 invites comment on that clarification.

Both entities contend the clarifying revision is incorrect.

**The staff recommends that it further discuss each of these issues with both entities, and report back to the Commission with another staff recommendation on the revision of this existing section later in this study.**

**Proposed Section 19225 (Existing Section 9005)**

Proposed Section 19225 would continue existing Section 9005, which appears in a statutory article relating to fishing traps. However, the existing section also

compels DFW to implement regulations requiring “standardized gear marking” for any fishery the department deems appropriate. In a Note following the proposed section, the Commission inquired whether the inclusion of this requirement applicable to “gear” generally in a code section otherwise applicable only to fishing traps was problematic.

DFW advises that the reference to “gear” is in fact intended to apply to gear generally and not just fishing traps, and agrees that relocation of the gear regulation provision in a “more generally applicable location” would be appropriate. However, it does not offer a suggestion as to any particular location.

FGC believes the use of the term “gear” in Section 9005 is potentially ambiguous, but is concerned that relocation of the gear regulation provision could create both a significant statutory change as well as a conflict with other existing code sections.

**The staff recommends that it further discuss each of these issues with both entities, and report back to the Commission with another staff recommendation on the revision of this existing section later in this study.**

#### **Proposed Section 19900 (Existing Section 8614)**

Proposed Section 19900 would continue existing Section 8614, which begins with a reference to an “experimental permit” for which no further context is provided:

8601.5. (a) If an experimental permit is revoked or not renewed, pursuant to a judgment, a decision of the commission, or a legislative enactment, and the permittee has an outstanding loan with the State Coastal Conservancy under Section 31125 of the Public Resources Code, as added by Chapter 910 of the Statutes of 1986, for the purchase of alternative fishing gear, the unpaid balance of the loan shall be excused from the date of revocation or nonrenewal of the permit, or from the date of any judgment, decision, or enactment which terminates the permit, if the permittee relinquishes the permit and returns the collateral fishing gear to the department, in which case the department shall take possession of the alternative fishing gear for the State Coastal Conservancy. Any alternative gear received by the department due to a revocation, nonrenewal, or termination of an experimental permit may be resold by the State Coastal Conservancy at fair market value to other experimental permit applicants or holders under this article. If the permittee chooses to keep the alternative gear and repay the loan, the rate of

interest shall be reduced to 3 percent for the remaining balance of the loan.

(b) If the Legislature approves the permanent use or type of gear and the commercial fishing permit or the license for the permanent use or type of gear is revoked for a violation of the terms and conditions under which the fishery is conducted, the permittee shall be responsible for any remaining balance on any outstanding loan with the State Coastal Conservancy for the purchase of alternative fishing gear.

A Note in the tentative recommendation following proposed Section 19900 sought clarification as to the nature of or statutory authority for the referenced experimental permit, for possible inclusion in the text of the provision. Unfortunately, the Note was both awkwardly worded and incomplete, thereby precluding a responsive comment from either entity.

**The staff recommends that it further discuss this issue with both entities, and report back to the Commission with another staff recommendation on the revision of this existing section later in this study.**

#### **Proposed Section 21100 (Existing Section 8046)**

Proposed Section 21100 would restate part of existing Section 8046 to make the restated provision easier to understand and use, without intending any substantive change in meaning.

FGC agrees that the proposed restatement would not substantively change the meaning of the existing provision, while DFW believes the restatement would create a significant and problematic substantive change.

**The staff recommends that it further discuss the restatement with both entities, and report back to the Commission with another staff recommendation on the revision of this existing section later in this study.**

#### **Proposed Section 22515 (Existing Section 8104); Proposed Section 23615 (Existing Section 7852.25)**

The staff believes that the wording or format of Commission Notes following proposed Sections 22515 and 23615 was unclear, causing the Notes to be either misunderstood or overlooked by the entities.

**The staff recommends that it further discuss the revisions in these two sections with both entities, and report back to the Commission with another staff recommendation on the revisions later in this study.**

**Proposed Section 24220 (Existing Section 15406.7)**

A part of proposed Section 24220 would continue existing Section 15406.7, which specifies the “privilege tax” that must be paid in conjunction with an oyster lease. Proposed Section 24220 would have revised that reference to instead refer to a “privilege fee,” and a Note following the proposed section inquired about the appropriateness of that substitution.

DFW believes that the substitution of the word “fee” for “tax” is appropriate, while FGC believes the use of the term “privilege fee” would create a significant substantive change.

**The staff recommends that it further discuss the issue with both entities, and report back to the Commission with another staff recommendation on the revision of this existing section later in this study.**

NO FURTHER ACTION RECOMMENDED

This part of the supplement addresses proposed revisions for which the staff has concluded, after considering public comment, there is not sufficient evidence of a problem to justify making the proposed change.

**This entire section of this supplement will be treated as a consent item.** Unless a Commissioner or member of the public requests that a matter in this section be discussed, it will not be presented at the upcoming meeting. Instead, after an opportunity to raise any objections, the staff will ask the Commission to approve the staff’s recommendation that the matters discussed below be set aside without further action being taken.

**Proposed Section 18815 (Existing Section 9027.5(c))**

Proposed Sections 18815(d) would restate the part of existing Section 9027.5(c) the staff believed to be applicable to one of several identified Fish and Game Districts. A Note following the proposed section inquired as to whether the proposed restatement was problematic.

The entities have clarified that no part of the territory geographically described in Section 18815(d) is contained within the Fish and Game District that is the subject of proposed Section 18815, rendering the entire subdivision unnecessary.

### **Proposed Section 22715 (Existing Section 8113)**

Proposed Section 22715 would continue existing Section 8113, which references the use or possession of a type of gear known as a “troll line.” In a Note following the proposed section, the Commission inquired as to whether that term should be statutorily linked with a definition of that gear in another code section.

After considering comment from DFW and again reviewing the text of the section, it appears that the staff missed a cross-reference to the definitional provision with Section 8113.

#### PURELY INFORMATIONAL MATTERS

The tentative recommendation included explanatory Notes, relating to the provisions listed below or inquiring about a possible revision of a provision but not proposing any change. Where there was no response to these Notes, or the response indicates the absence of any need for reform, those issues will not be discussed further (unless a Commissioner raises an issue).

For completeness, provisions that fall into this category are listed below.

- **Proposed Section 18305 (Existing Section 8561.5)**
- **Proposed Section 18380 (Existing Section 8579)**
- **Proposed Section 18400 (Existing Section 8583)**
- **Proposed Section 18405 (Existing Section 8583.5)**
- **Proposed Section 18705 (Existing Section 9028)**
- **Proposed Section 19315 (Existing Section 9002.5)**
- **Proposed Section 20225 (Existing Section 7852.27)**
- **Proposed Section 20450 (Existing Sections 8033 and 8047)**
- **Proposed Section 21935 (Existing Section 6596.1)**
- **Proposed Section 22815 (Existing Section 7712)**
- **Proposed Section 23600 (Existing Section 15101)**
- **Proposed Section 23605 (Existing Section 15101)**
- **Proposed Section 23610 (Existing Section 15101)**
- **Proposed Section 23700 (Existing Section 15101)**
- **Proposed Section 23705 (Existing Section 15103)**

- **Proposed Section 23710 (Existing Section 15104)**
- **Proposed Section 23720 (Existing Section 15103)**

Respectfully submitted,

Steve Cohen  
Staff Counsel